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No. 78-1662

In the Supreme Court of the United States

OCTOBER TERM, 1978

CHEVRON U.S.A. INC., ET AL., PETITIONERS

v.

CECIL D. ANDRUS, SECRETARY
of the INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-19) is reported at 588 F. 2d 1383. The opinion of the district court (Pet. App. A-24 to A-31) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on February 9, 1979 (Pet. App. A-20 to A-21). A petition for rehearing was denied on March 8, 1979 (Pet. App. A-22 to A-23). The petition for a writ of certiorari was filed on May 2, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Secretary of the Interior's delegation of the authority to accept or reject bids for oil and gas leases for the outer continental shelf precludes the Secretary from reviewing and reversing his subordinate's decision that a bid should be accepted.

REGULATIONS INVOLVED

43 C.F.R. 3302.5 (1977) is reprinted at Pet. 2.

43 C.F.R. 4.5 (1977) provided:

> Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law. The Secretary reserves under his supervisory powers the right to take original jurisdiction of any case and render the final decision in the matter, after holding such hearing as may be required by law. The same authority, except with respect to the conduct of hearings pursuant to 5 U.S.C. sec. 554, may be exercised by the Director pursuant to his delegated supervisory authority from the Secretary.

43 C.F.R. 3300.0-3 provides:

> The Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 462; 43 U.S.C. §1331 et seq.), referred to in this part as "the act", among other things, authorizes the Secretary of the Interior to issue on a competitive basis leases for oil and gas, sulphur, and other minerals in submerged lands of the Outer Continental Shelf, as defined in section 2 of the act. Subject to the supervisory authority of the Secretary, the regulations in this part shall be administered by the Director, Bureau of Land Management, hereinafter referred to in this part as the Director.

Secretary of the Interior Order No. 2583, 15 Fed. Reg. 5643 (1950), as amended, 27 Fed. Reg. 2862 (1962), provides in pertinent part:

> BUREAU OF LAND MANAGEMENT
> DELEGATION OF AUTHORITY IN CONNECTION WITH LANDS AND RESOURCES
>
> * * * * *
>
> PART 2—AUTHORITY IN SPECIFIED MATTERS
>
> The Director, subject to the provisions of Part 1 of this order, is hereby authorized to take all actions, except as otherwise hereinafter provided, with respect to the following matters:
>
> * * * * *
>
> SEC. 2.36 *Mineral leases of submerged lands of Outer Continental Shelf.* * * *
>
> (b) Mineral leases pursuant to the act of August 7, 1953 (67 Stat. 462; 43 U.S.C. 1331 et seq.), and the regulations under 43 CFR, Part 201, [now 43 CFR 3300 et seq.], except that approval by a Secretarial officer must be obtained prior to the issuance of calls for the submission of requests for oil and gas or other mineral lease offerings pursuant to section 201.20 and the publication of notices of the offer of lands for lease pursuant to section 201.21.

Bureau of Land Management Order No. 701, as amended, 39 Fed. Reg. 9213, 9214 (1974), provides in pertinent part:

> SEC. 4.6 Outer Continental Shelf Leasing. The Managers, Outer Continental Shelf Offices, are

authorized to take all actions in connection with the following.

* * * * *

(b) Mineral leases pursuant to the Act of August 7, 1953 (67 Stat. 462; 43 U.S.C. 1331 et seq.), and the regulations under 43 CFR Part 3300 except the issuance of calls for the submission of requests for oil and gas or other mineral lease offerings pursuant to 43 CFR 3301.3 and the publication of notices of the offer of lands for lease pursuant to 43 CFR 3301.5.

STATEMENT

Petitioners were the highest bidders on two of the tracts offered for lease during the Outer Continental Shelf Oil and Gas Lease Sale held on February 4, 1975 (Pet. App. A-3). After the public opening of the bids, the Gulf of Mexico Outer Continental Shelf (OCS), Office of the Bureau of Land Management, Department of the Interior, prepared statistical analyses of the bids received (*ibid.*). The Acting Conservation Manager, Gulf of Mexico OCS Operations, Geological Survey, recommended that the bids be rejected, but John Rankin, manager of the OCS Office in New Orleans, recommended that petitioners' bids be accepted (Pet. App. A-3 & n.1). The Director of the Bureau of Land Management also recommended that the bids be accepted (Pet. App. A-3). The Assistant Secretary for Land and Water Resources, Department of the Interior, however, recommended that the bids be rejected as inadequate (*ibid.*).

Deputy Under Secretary of the Interior William W. Lyons, whose action was final for the Department in this matter, ultimately decided that the petitioners' bids should be rejected, and accordingly on February 25, 1975, Mr. Rankin notified the petitioners that their bids on the two tracts had been rejected (Pet. App. A-3).

After requests for reconsideration of this determination had been denied by the Secretary of the Interior, petitioners filed these consolidated actions seeking a declaration that they were entitled to the leases. The district court granted summary judgment in favor of petitioners, holding that the Secretary had delegated the authority to award or deny leases to the manager of the OCS office, and that in the absence of a specific regulation, the Secretary had no authority to overrule the office manager's decision (Pet. App. A-24 to A-31).

The court of appeals reversed (Pet. App. A-1 to A-19). It held that the departmental regulations did not confer exclusive authority on the office manager, and that the Secretary retained the authority to review and revise the office manager's determination before it was communicated to the bidders by written notice (Pet. App. A-9 to A-12).[1]

ARGUMENT

Petitioners contend that the regulations at issue here, like those discussed in *United States ex rel. Accardi* v. *Shaughnessy*, 347 U.S. 260 (1954), denied the Secretary the right to exercise certain authority he had delegated unless he first revoked that delegation. The court of appeals rejected this contention, concluding (Pet. App. A-10) that the particular regulations at issue here did "not deprive the Secretary of the power to review and revise his [delegee's] determinations before they are communicated

[1] The court of appeals also held (Pet. App. A-13 to A-18), rejecting the government's arguments, that the Secretarial decision to reject all bids is subject to judicial review. It therefore remanded the case for further proceedings in the district court (Pet. App. A-18 to A-19 & n.15).

to the bidders." The court of appeals' interpretation of these regulations is correct, and it presents no issue of general importance warranting review by this Court.

The departmental regulations on which petitioners rely provide that awards of OCS mineral leases "will be made only by written notice from the authorized officer," 43 C.F.R. 3302.5 (1977), and that "[s]ubject to the supervisory authority of the Secretary," the Director of the Bureau of Land Management (BLM) will administer the regulations regarding OCS mineral leases. 43 C.F.R. 3300.0-3. The Director of BLM is authorized "to take all actions * * * with respect to" OCS mineral leases,[2] and the Director in turn has authorized the manager of the OCS office for the Gulf of Mexico to act with respect to leases in the Gulf of Mexico.[3]

As the court of appeals correctly concluded (Pet. App. A-9 to A-10), these regulations were not intended to preclude the Secretary (or in this case the Deputy Under Secretary) from reviewing or revising the determination of the OCS office manager. To the contrary, Interior's Departmental Manual provides that "[a]n officer who delegates or redelegates authority does not divest himself of the power to exercise that authority." 200 D.M. §1.3 (1970).

Nor is there merit to petitioners' contention that the Deputy Under Secretary's action in reviewing and revising the office manager's decision deprived petitioners of their opportunity for an initial administrative decision followed

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[2]Secretary of the Interior Order No. 2583, Pt. 2, Section 2.36, 15 Fed. Reg. 5643 (1950), as amended, 27 Fed. Reg. 2862 (1962), is reprinted at page 3, *supra*.

[3]Bureau of Land Management Order No. 701, Section 4.6(b), as amended, 39 Fed. Reg. 9213, 9214 (1974), is reprinted at pages 3-4, *supra*.

by administrative review by the Interior Board of Land Appeals (IBLA). See 43 C.F.R. 4.1(3). The regulations in effect at the time of the Secretary's action expressly reserved to the Secretary the authority to substitute his own review for that of the IBLA. After establishing the IBLA, the regulations provided (43 C.F.R. 4.5 (1977)) that:

> The Secretary reserves under his supervisory powers the right to take original jurisdiction of any case and render the final decision in the matter, after holding such hearing as may be required by law.[4]

Accordingly, petitioners' reliance on *United States ex rel. Accardi* v. *Shaughnessy* is misplaced. That case turned on the fact that the Department of Justice regulations vested broad authority in the Board of Immigration Appeals to " 'exercise such discretion and power conferred upon the Attorney General by law as is appropriate and necessary for disposition of the case' " before the Board. 347 U.S. at 266. The Court concluded that the regulations contemplated the Attorney General's

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[4]The current regulations, adopted August 24, 1978, 43 Fed. Reg. 37689, 37690, are even more explicit on this point. 43 C.F.R. 4.5(a) provides:

> *Secretary.* Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law. The authority reserved to the Secretary includes, but is not limited to:
>
> (1) The authority to take jurisdiction at any stage of any case before anny employee or employees of the Department, including any administrative law judge or board of the Office, and render the final decision in the matter after holding such hearing as may be required by law; and
>
> (2) The authority to review any decision of any employee or employees of the Department, including any administrative law judge or board of the Office, or to direct any such employee or employees to reconsider a decision.

review of the Board's discretionary decision, but they did not permit him to dictate those decisions in the first instance.[5] In contrast, the court of appeals correctly concluded that the Secretary of the Interior's delegation of authority did not divest him of the authority to make a determination himself, or to review and revise his subordinate's decision.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[5]Similarly, in *United States* v. *Nixon*, 418 U.S. 683, 694-696 (1974), this Court reaffirmed *Accardi* in a case involving a regulation giving the Special Prosecutor the "explicit power to contest the invocation of executive privilege," which the Court pointed out was "not an ordinary delegation by the Attorney General to a subordinate officer," but rather one where the Attorney General had bound himself not to remove the Special Prosecutor without "the 'consensus' of eight designated leaders of Congress."

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